IN THE COURT OF APPEALS OF TENNESSEE
AT KNOXVILLE
April 12, 2023 Session

HOLSTON PRESBYTERY OF THE PRESBYTERIAN CHURCH (U.S.A.), INC. v. BETHANY PRESBYTERIAN CHURCH

Appeal from the Chancery Court for Sullivan County
No. 18CK41633C E. G. Moody, Chancellor

No. E2022-01337-COA-R3-CV

A congregation within the Presbyterian Church sought to disaffiliate from its presbytery while retaining ownership of its real property. The presbytery argued that the congregation did not own the real property outright but rather held it in trust for the benefit of the national body of the Presbyterian Church. Following a hearing on competing motions for summary judgment, the trial court determined that the congregation owned the property outright. Thus, it denied the presbytery's motion and granted the congregation's motion. The presbytery timely appealed to this Court. Following careful review, we reverse.

Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Chancery Court Reversed; Case remanded

KRISTI M. DAVIS, J., delivered the opinion of the Court, in which D. MICHAEL SWINEY, C.J., and JOHN W. MCCLARTY, J., joined.

Thomas L. Kilday, Greeneville, Tennessee, for the appellant, Holston Presbytery of The Presbyterian Church (U.S.A.), Inc.

Rebecca J. Ketchie, Kingsport, Tennessee, for the appellee, Bethany Presbyterian Church.

OPINION

BACKGROUND

This appeal arises from a real property dispute between Holston Presbytery ("Holston") and Bethany Presbyterian Church ("Bethany"), a church in Holston's

geographic district.[1] Most of the underlying facts are undisputed. By way of relevant background, the Presbyterian Church split into two sects following the American Civil War, one of which was the Presbyterian Church in the United States, or PCUS. When Bethany formed in the 1940s, it was unincorporated but affiliated with PCUS. The deed to the first parcel of church property acquired in 1944 listed the grantee as "Trustees of Bethel[2] Presbyterian Church, Holston Presbytery, Presbyterian Church in the United States." In 1946, a second parcel of property was acquired by Bethany, the grantee being "Trustees of Bethany Presbyterian Church, Holston Presbytery, Presbyterian Church of the United States." The first church building was constructed in the mid-1940s using only congregant labor and donations. From its inception in the 1940s through 1971, Bethany continued acquiring small parcels of property, most of which were acquired from church members. The parcel now at issue is approximately 1.7 acres.

It is undisputed that after Bethany incorporated in 1969, all property held by the trustees of the church was deeded to the newly-incorporated body in the name of "Bethany Presbyterian Church, a corporation." In 1972, Bethany broke ground on a new church building using a construction loan provided by PCUS and secured by a deed of trust to the property titled in Bethany's name. The Construction Loan Agreement recites that Bethany is the legal title holder of the real property with which the loan was secured.

The governing document of the Presbyterian Church is called the "Constitution," one portion of which is the "Book of Order." The Book of Order contains, in part, the denomination's rules regarding polity, form of government, and discipline. Prior to 1981, no document or agreement with PCUS, including the Book of Order, provided that individual congregations such as Bethany held real property in trust for the benefit of PCUS. Rather, as of 1953, the PCUS Book of Order provided that "[t]he beneficial ownership of the property of a particular church . . . is in the congregation of such church and title may properly be held in any form[.]"

While the issue of church property being held in trust for PCUS arose several times, that arrangement did not come to fruition until 1981 when the PCUS General Assembly amended its Book of Order, adding a provision declaring congregational property in trust for the PCUS. It was not until these amendments took effect in 1982 that a trust provision actually appeared in the PCUS Book of Order. At the next General Assembly in 1983, PCUS united with the northern branch of the Presbyterian Church to form the Presbyterian Church (U.S.A.) ("PCUSA"). Upon the reunification of the two Presbyterian factions, Bethany became a member congregation affiliated with PCUSA under the umbrella of Holston Presbytery. The Articles of Agreement governing the reunion of the two factions

[1] A "presbytery" is an organizational unit within the structure of the larger Presbyterian Church. A presbytery presides over several congregations in a certain geographical area. The head organizational unit is called the "General Assembly."

[2] When originally formed, Bethany was known as "Bethel," but the name was later changed because another church in the same area was also named "Bethel."

provided that upon the reunion, the Constitution of PCUSA became operative. The operative Book of Order included the following relevant provisions:

> G-4.0202 Decisions Concerning Property
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> The provisions of this Constitution prescribing the manner in which decisions are made, reviewed, and corrected within this church are applicable to all matters pertaining to property.
>
> G-4.0203 Church Property Held in Trust
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> All property held by or for a congregation, a presbytery, a synod, the General Assembly, or the Presbyterian Church (U.S.A.), whether legal title is lodged in a corporation, a trustee or trustees, or an unincorporated association, and whether the property is used in programs of a congregation or of a higher council or retained for the production of income, is held in trust nevertheless for the use and benefit of the Presbyterian Church (U.S.A.).
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> G-4.0204 Property Used Contrary to the Constitution
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> Whenever property of, or held for, a congregation of the Presbyterian Church (U.S.A.) ceases to be used by that congregation as a congregation of the Presbyterian Church (U.S.A.) in accordance with this Constitution, such property shall be held, used, applied, transferred, or sold as provided by the presbytery.
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> G-4.0205 Property of a Dissolved or Extinct Congregation
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> Whenever a congregation is formally dissolved by the presbytery, or has become extinct by reason of the dispersal of its members, the abandonment of its work, or other cause, such property as it may have shall be held, used, and applied for such uses, purposes, and trusts as the presbytery may direct, limit, and appoint, or such property may be sold or disposed of as the presbytery may direct, in conformity with the Constitution of the Presbyterian Church (U.S.A.).
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> G-4.0206 Selling, Encumbering, or Leasing Church Property
>
> a. Selling or Encumbering Congregational Property
>
> A congregation shall not sell, mortgage, or otherwise encumber any of its real property and it shall not acquire real property subject to an

> encumbrance or condition without the written permission of the presbytery transmitted through the session of the congregation.
>
> b. Leasing Congregational Property
>
> A congregation shall not lease its real property used for purposes of worship, or lease for more than five years any of its other real property, without the written permission of the presbytery transmitted through the session of the congregation.

It is undisputed that under PCUSA rules, any congregation could be dismissed from its presbytery with the congregation's real property, but the separation had to occur in the first eight years following the reunification. It is also undisputed that Bethany did not seek separation from PCUSA in the first eight years following the reunification. According to Bethany, however, over the years the congregation did "become increasingly concerned about the direction of the PCUSA, particularly at the General Assembly level." Bethany requested dismissal from Holston in 2014 and tried to negotiate regarding the congregation's real property. Bethany was officially dismissed as a congregation on September 1, 2014. It then joined another Presbyterian denomination, the Evangelical Presbyterian Church.

Holston and Bethany could not agree regarding the real property. For a period of time, Bethany rented the church building from Holston for $50 per month. Then, in 2018, Holston informed Bethany that the monthly rent would increase to $500 per month, which Bethany refused to pay. On October 15, 2018, Holston filed the instant action in the Chancery Court for Sullivan County (the "trial court"). Holston's complaint sought a declaratory judgment that PCUSA, acting through Holston, rightfully owned the real estate at issue because Bethany held the property in trust for PCUSA's benefit. Holston also sought an injunction keeping Bethany members from occupying or coming onto the property, as well as damages in the form of rent payments for the time that the Bethany congregation "unlawfully" occupied the church.

Following discovery, Holston filed a motion for summary judgment on October 8, 2021. Bethany responded and filed a cross-motion for summary judgment. A hearing was held on July 12, 2022. The trial court did not rule on the motions but asked the parties to submit proposed orders, which they did. On August 29, 2022, the trial court entered an order denying Holston's motion for summary judgment and granting Bethany's. In relevant part, the trial court found as follows:

> I find that under neutral principles of law, no trust in favor of Holston Presbytery exists in some legally cognizable form. Under Tennessee law, trusts may be either express or implied. The only express mention of a trust over church property contained in a legal document relevant to this case is

> found in the PCUSA Book of Order, which is in the nature of bylaws for the denomination. But the language declaring a trust was not in the Book of Order until 1982, well after Bethany had acquired and improved all the property at issue. In no secular context would Tennessee courts permit a would-be beneficiary to declare an ex post facto trust over another's real property in favor of itself, without a legally recognizable conveyance of the property by the grantor into the trust.

As addressed below, the trial court's final order is taken almost entirely verbatim from Bethany's proposed order. Holston timely appealed to this Court.

ISSUES

Holston raises two issues on appeal, which we have slightly restated:

1. Whether the trial court failed to exercise its independent judgment by entering an essentially verbatim copy of Bethany's proposed final order.

2. Whether the trial court erred in granting summary judgment in favor of Bethany.

STANDARD OF REVIEW

This case was resolved by summary judgment. A trial court may grant summary judgment only if the "pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits . . . show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." Tenn. R. Civ. P. 56.04. The propriety of a trial court's summary judgment decision presents a question of law, which we review de novo with no presumption of correctness. *Kershaw v. Levy*, 583 S.W.3d 544, 547 (Tenn. 2019).

"The moving party has the ultimate burden of persuading the court that there are no genuine issues of material fact and that the moving party is entitled to judgment as a matter of law." *Martin v. Norfolk S. Ry. Co.*, 271 S.W.3d 76, 83 (Tenn. 2008). As our Supreme Court has instructed,

> when the moving party does not bear the burden of proof at trial, the moving party may satisfy its burden of production either (1) by affirmatively negating an essential element of the nonmoving party's claim or (2) by demonstrating that the nonmoving party's evidence *at the summary judgment stage* is insufficient to establish the nonmoving party's claim or defense.

Rye v. Women's Care Ctr. of Memphis, 477 S.W.3d 235, 264 (Tenn. 2015). "[I]f the moving party bears the burden of proof on the challenged claim at trial, that party must produce at the summary judgment stage evidence that, if uncontroverted at trial, would entitle it to a directed verdict." *TWB Architects, Inc. v. Braxton, LLC*, 578 S.W.3d 879, 888 (Tenn. 2019) (citing *Celotex Corp. v. Catrett*, 477 U.S. 317, 331 (1986)).

When a party files and properly supports a motion for summary judgment as provided in Rule 56, "to survive summary judgment, the nonmoving party may not rest upon the mere allegations or denials of its pleading, but must respond, and by affidavits or one of the other means provided in Tennessee Rule 56, set forth specific facts . . . showing that there is a genuine issue for trial." *Rye*, 477 S.W.3d at 265 (internal quotation marks and brackets in original omitted). "Whether the nonmoving party is a plaintiff or a defendant—and whether or not the nonmoving party bears the burden of proof at trial on the challenged claim or defense—at the summary judgment stage, '[t]he nonmoving party must demonstrate the existence of specific facts in the record which could lead a rational trier of fact to find in favor of the nonmoving party.'" *TWB Architects*, 578 S.W.3d at 889 (quoting *Rye*, 477 S.W.3d at 265).

DISCUSSION

I. The trial court's final order

Holston first challenges the procedure used by the trial court in rendering its final decision. Following the hearing on July 12, 2022, the trial court declined to rule orally and instructed the parties to submit proposed findings of fact and conclusions of law, which they did. It is undisputed that the final order entered by the trial court is adopted almost entirely verbatim from Bethany's proposed order. As such, Holston argues that the trial court's ruling was not a product of its independent judgment and contravenes our Supreme Court's ruling in *Smith v. UHS of Lakeside, Inc.*, 439 S.W.3d 303, 317–18 (Tenn. 2014).

As relevant, Tennessee Rule of Civil Procedure 56.04 provides that when ruling on summary judgment, "[t]he trial court shall state the legal grounds upon which the court denies or grants the motion, which shall be included in the order reflecting the court's ruling." In *Smith*, the trial court orally granted a motion for summary judgment from the bench but "did not state the legal grounds for its decisions." 439 S.W.3d at 312. Later, however, the trial court entered orders "contain[ing] detailed statements of the factual and legal grounds upon which the order was based." *Id.* The trial court's "extremely detailed orders [were] essentially a restatement of the arguments contained in Lakeside's filings in support of its motions for summary judgment." *Id.* at 317. Accordingly, our Supreme Court considered whether the orders "were the product of the trial court's own independent judgment[,]" ultimately concluding that they were not. *Id.* at 312.

Applying that holding, the Court explained:

> [W]e do not find that Tenn. R. Civ. P. 56.04 is in any way inconsistent with the custom of permitting trial courts to request and consider proposed orders prepared by the prevailing party. However, as we emphasized in the context of the findings of fact and conclusions of law required by Tenn. R. Civ. P. 52.01, Tenn. R. Civ. P. 56.04 must be interpreted in a way that assures that a trial court's decision whether to grant or deny a motion for summary judgment is its own. *Delevan–Delta Corp. v. Roberts*, 611 S.W.2d [51, 53 (Tenn. 1981)].
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> Thus, for the reasons we have already discussed, we conclude that Tenn. R. Civ. P. 56.04 requires the trial court, upon granting or denying a motion for summary judgment, to state the grounds for its decision before it invites or requests the prevailing party to draft a proposed order. Not only will this requirement assure that the decision is the trial court's, it will also (1) assure the parties that the trial court independently considered their arguments, (2) enable the reviewing courts to ascertain the basis for the trial court's decision, and (3) promote independent, logical decision-making. *See DiLeo v. Ernst & Young*, 901 F.2d 624, 626 (7th Cir. 1990); *State v. King*, 432 S.W.3d 316, 322 (Tenn. 2014).
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> * * *
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> In this case, the judicial act should have consisted not only of announcing a decision to grant part of Lakeside's motions for summary judgment but also stating the grounds for that decision. Because the record demonstrates that the trial court did not provide the basis for its decision prior to the preparation of the draft orders, the grounds stated in the order cannot be attributed to the trial court.

Id. at 316–17 (footnotes omitted). Consequently, the *Smith* Court affirmed this Court's decision to vacate the trial court's orders granting Lakeside summary judgment, and remanded the case for further proceedings. *Id.* at 318.

In the wake of that decision,

> this Court ha[s] applied the rule articulated in *Smith* to matters (1) not involving summary judgment and/or (2) wherein the trial court's directive to draft a proposed order or findings was extended to both parties rather than just the prevailing party. *See Cunningham v. Eastman Credit Union*, No. E2019-00987-COA-R3-CV, 2020 WL 2764412, at *2 (Tenn. Ct. App. May 27, 2020) (vacating the trial court's order and remanding for further proceedings based on the trial court's adoption of one party's proposed findings of fact and conclusions of law almost verbatim after taking the

> matter under advisement without issuing a ruling and after asking both sides to file proposals); *Mitchell v. Mitchell*, No. E2017-00100-COA-R3-CV, 2019 WL 81594, at *7 (Tenn. Ct. App. Jan. 3, 2019) (same); *Deberry v. Cumberland Elec. Membership Corp.*, No. M2017-02399-COA-R3-CV, 2018 WL 4961527, at *2 (Tenn. Ct. App. Oct. 15, 2018) (same).

Highlands Physicians, Inc. v. Wellmont Health Sys., 625 S.W.3d 262, 281 (Tenn. Ct. App. 2020).

Here, following the parties' arguments on their respective motions, the trial court stated that it needed to review the record and asked for proposed orders. It then entered a nearly verbatim copy of the proposed order submitted by Bethany. Accordingly, we agree with Holston that the trial court's procedure amounts to a violation of Tennessee Rule of Civil Procedure 56.04 and is not "compliant with either the letter or the spirit of *Smith*." *Huggins v. McKee*, 500 S.W.3d 360, 366 (Tenn. Ct. App. 2016). Indeed, this is the same procedure at issue in *Cunningham*, in which this Court determined that the trial court's final order did not "represent the trial court's own independent analysis and judgment" and vacated the order.[3] 2020 WL 2764412, at *5.

Nonetheless, "such a violation 'is not reversible error *under all circumstances.*'" *Highlands*, 625 S.W.3d at 283 (quoting *Coffman v. Armstrong Int'l, Inc.*, No. E2017-00062-COA-R3-CV, 2019 WL 3287067, at *4 (Tenn. Ct. App. July 22, 2019)). In *Highlands*, for example, we reasoned that the procedural posture was slightly different from that of *Smith* and its progeny, the case had been pending for many years, and the parties had already proceeded through a lengthy trial and a prior appeal. 625 S.W.3d at 284. We therefore exercised our discretion to consider the merits of the case. *Id.*; *see also Huggins*, 500 S.W.3d at 366 (also determining that, in this Court's discretion, remand was not warranted under the circumstances because the "case has been awaiting resolution for nearly a decade and was previously remanded to the trial court because the trial court failed to offer an appropriate basis for its prior dismissal").

In this case, the status of the property at issue has been in flux since 2014, and the trial court judge retired shortly after the entry of the final order. Moreover, the present case presents a pure issue of law. The material facts are undisputed, and the record is not substantial. *See Shaw v. Gross*, No. W2017-00441-COA-R3-CV, 2018 WL 801536, at *9 (Tenn. Ct. App. Feb. 9, 2018) ("[T]here is uncertainty surrounding the facts in the record that make us reluctant to soldier on in this case"). Consequently, under these very particular circumstances, the trial court's error does not "significantly hamper" our review or offend judicial economy. *Smith*, 439 S.W.3d at 314. And so "we exercise our discretion to proceed to consider the merits of this appeal, but we caution litigants and trial courts that

[3] Incidentally, *Cunningham* was also an appeal from the Chancery Court for Sullivan County.

we may not choose to do so under similar circumstances in the future." *Huggins*, 500 S.W.3d at 366–67.

II. The real property

The fundamental issue on appeal is whether Bethany owns its real property outright, or held it in trust for the benefit of PCUSA by virtue of the Book of Order. Holston argues that the trial court erred in concluding that the property was not held in trust for PCUSA and claims that either an implied trust or trust exists. Specifically, Holston claims that "[p]roperty of a member congregation of a hierarchical church acquired even before trust language was inserted in a church denomination's governing documents is held in trust for the greater denomination[.]" On the other hand, Bethany asserts that per the neutral-principles of law approach, no trust exists.

Although we agree with Bethany that the neutral-principles of law approach controls the case-at-bar, Bethany misconstrues the holding of the seminal Tennessee case adopting that approach. In 2017, our Supreme Court elucidated the appropriate analysis for church property disputes such as this one:

> [C]ivil courts have general authority to resolve church property disputes and have "an obvious and legitimate interest in the peaceful resolution of property disputes, and in providing a civil forum where the ownership of property can be determined conclusively." *Jones* [*v. Wolf*, 443 U.S. 595,] 602, 99 S.Ct. 3020 [1979]. A state may adopt "'*any* one of various approaches for settling church property disputes *so long as it involves no consideration of doctrinal matters, whether the ritual and liturgy of worship or the tenets of faith.*'" *Jones*, 443 U.S. at 602, 99 S.Ct. 3020 (second emphasis added) (quoting *Md. & Va. Eldership of Churches of God v. Church of God at Sharpsburg, Inc.*, 396 U.S. 367, 368, 90 S.Ct. 499, 24 L.Ed.2d 582 (1970) (Brennan, J., concurring)). So far, however, only two general approaches for resolving church property disputes have received the Supreme Court's endorsement as constitutionally permissible—the rule of hierarchical deference and the neutral-principles approach. *See Jones*, 443 U.S. at 604, 99 S.Ct. 3020 (endorsing the neutral-principles approach applied by Georgia); *Watson* [*v. Jones*, U.S. (13 Wall.) 679, 727, 20 L.Ed. 666 (1871)] (adopting the rule of hierarchical deference); *Kedroff* [*v. Saint Nicholas Cathedral of Russian Orthodox Church in N. Am.*, 344 U.S. 94,] at 115-16, 73 S.Ct. 143 [(1952)] (explaining that the holding of *Watson* was required by the First Amendment).

Church of God in Christ, Inc. v. L.M. Haley Ministries, Inc. (*COGIC*), 531 S.W.3d 146, 162 (Tenn. 2017).

The *COGIC* Court explained that "a majority of states now apply the neutral-principles approach, while several states have retained the rule of hierarchical deference, and still other states have not yet decided which approach to adopt." *Id.* at 167. However, "two versions of the neutral-principles approach have emerged." *Id.* at 168. The first version, the strict neutral-principles approach, is the minority approach, and "only a few states have adopted it." *Id.* Under the strict approach, "courts only give effect to provisions in church constitutions and governing documents of hierarchical religious organizations if the provisions appear in civil legal documents or satisfy the civil law requirements and formalities for imposition of a trust." *Id.* (citing Michael W. McConnell & Luke W. Goodrich, *On Resolving Church Property Disputes*, 58 Ariz. L. Rev. 307, 324–25 (2016)). The second version, the hybrid neutral-principles approach, provides that

> courts defer to and enforce trust language contained in the constitutions and governing documents of hierarchical religious organizations, even if this language of trust is not included in a civil legal document and does not satisfy the formalities that the civil law normally requires to create a trust.

Id. Citing a litany of cases from other jurisdictions, our Supreme Court noted that "[m]ost states apply the hybrid approach," *id.*, and adopted same:

> [C]ourts in Tennessee should apply the neutral-principles of law approach when called upon to resolve church property disputes. We also conclude that the hybrid approach is most consistent with the analysis the Supreme Court reviewed and approved as constitutionally permissible in *Jones* and also most consistent with the analysis courts in this State have previously used when resolving church property disputes. In applying the hybrid approach, Tennessee courts may consider any relevant statutes, the language of the deeds and any other documents of conveyance, charters and articles of incorporation, and any provisions regarding property ownership that may be included in the local or hierarchical church constitutions or governing documents. But under the neutral-principles approach that *Jones* approved as constitutionally permissible, and which we adopt, a civil court must enforce a trust in favor of the hierarchical church, even if the trust language appears only in the constitution or governing documents of the hierarchical religious organization. *See Jones*, 443 U.S. at 606, 99 S.Ct. 3020. This understanding of the contours of the neutral-principles approach derives from the discussion in *Jones* of the two options available to hierarchical religious organizations for ensuring that real property owned by local member churches is held in trust for the hierarchical organization. *Id.* The Supreme Court stated that deeds or corporate charters may be modified "at any time before a property dispute erupts . . . to include a right of reversion or trust in favor of the general church." *Id.* "Alternatively," the Supreme Court explained, "the constitution of the general church can be made to recite an express trust in favor of the

> denominational church." *Id.* The Court described the burden required to take these steps as "minimal" and declared that civil courts would "be bound to give effect to the result indicated by the parties, provided it is embodied in some legally cognizable form." *Id.* Read in context, this passage from *Jones* contemplates two methods of establishing a trust in favor of the hierarchical religious organization—one involving modification of civil legal documents and one involving modification of the governing documents of hierarchical religious organizations. Where a religious organization chooses the second option and includes an express trust provision in its constitution or governing documents before a dispute arises, courts in Tennessee must enforce and give effect to the trust provision, even if trust language does not appear in a deed or other civil legal document. By doing so, the neutral-principles approach will provide both hierarchical religious organizations and local member congregations the flexibility and predictability that *Jones* envisioned, allowing these organizations to decide for themselves how property disputes will be resolved *before a dispute arises*, thus avoiding contentious, painful, time consuming, and expensive litigation and minimizing the role of civil courts. *See Jones*, 443 U.S. at 603-04, 99 S.Ct. 3020.

Id. at 170–71 (internal bracketing and footnote omitted).

Returning to the present case, it is undisputed that the governing documents of PCUSA contain express trust language:

> G-4.0203 Church Property Held in Trust
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> All property held by or for a congregation, a presbytery, a synod, the General Assembly, or the Presbyterian Church (U.S.A.), whether legal title is lodged in a corporation, a trustee or trustees, or an unincorporated association, and whether the property is used in programs of a congregation or of a higher council or retained for the production of income, is held in trust nevertheless for the use and benefit of the Presbyterian Church (U.S.A.).

This language is unambiguous, and "[w]here a religious organization . . . includes an express trust provision in its constitution or governing documents before a dispute arises, courts in Tennessee must enforce and give effect to the trust provision." *COGIC*, 531 S.W.3d at 171. This is true "even if the trust language appears only in the constitution or governing documents of the hierarchical religious organization" and "does not appear in a deed or other civil legal document." *Id.* at 170, 171 (footnote omitted). Nonetheless, Bethany argues on appeal that under neutral principles of law, there was no completed trust for various reasons. For one, "the trust was never completed by conveyance of the property[,]" and under the law of trusts in effect in 1982, property must actually be

transferred to properly complete a trust.[4] Bethany contends in its brief that

> [i]f an individual creates a trust and declares that all his property is transferred to it, but fails to execute deeds granting his real property to the trust, the court would not in that instance declare an implied trust over the real property, but hold that the property remains titled in the individual. Under neutral principles of law, the trust is incomplete. The incomplete trust is held to be "revocable," even though more precisely it never truly existed. Similarly, under neutral, secular principles, the creation of a trust in the Book of Order was incomplete unless and until property was conveyed to the trust.

Bethany further maintains that "the real property on which Bethany's church building sits, and the building itself, were conveyed to the church when there was no trust provision in the applicable Book of Order."

Respectfully, all of the foregoing is inapposite in light of *COGIC*. Bethany contends repeatedly that under "neutral principles of law," no trust was created; however, Tennessee courts follow the *hybrid* neutral-principles approach, under which trust provisions in governing church documents must be enforced. *COGIC*, 531 S.W.3d at 170. Bethany's argument is more congruent with the strict neutral-principles approach, under which "courts only give effect to provisions in church constitutions and governing documents of hierarchical religious organizations if the provisions appear in civil legal documents or satisfy the civil law requirements and formalities for imposition of a trust." *Id*. at 168. That approach, however, was soundly rejected by our Supreme Court in *COGIC*. *Id*. at 170.

This Court's recent decision, *Blue v. Church of God Sanctified, Inc.*, No. M2021-00244-COA-R3-CV, 2022 WL 2302263 (Tenn. Ct. App. June 27, 2022), underscores our understanding of *COGIC* and our conclusion today. In that case, we rejected the argument that a congregation in a hierarchical church did not hold real property in trust for the broader church because the property had been deeded to the congregation many years prior to the adoption of trust language in governing church documents. The property at issue in *Blue* was located in Columbia, Tennessee, and was "originally conveyed to the church trustees and their successor trustees in transactions respectively dated 1903, 1953, and 1972." *Blue*, 2022 WL 2302263, at *1. It was "undisputed that title for all three parcels was never conveyed away from church trustees and their successors." *Id.*

Following a dispute between church members, the trustees filed a lawsuit against Church of God Sanctified, Inc., the church's bishop, the church's administer, and several remaining members. The plaintiffs sought, *inter alia*, to "separate and disaffiliate from the

[4] Bethany notes that the Tennessee Uniform Trust Code was not in effect in 1982 and argues that we should thus look to the Restatement (Second) of Trusts.

[national Church of God] and to assert [ ] independent property rights and ownership of [the] church building." *Id.* at *2. The defendants maintained that plaintiffs had no right to the property, as the Church of God "Manual" provides:

> 1. All real estate owned or hereafter acquired by the Church of God Sanctified, Incorporated or by any of its charges or parishes shall be deeded directly to it in its corporate name.
>
> 2. All deeds by which premises are hereafter acquired for use, for a place of divine worship, shall contain the following trust clause:
>
> In trust, that said premises shall be used, kept, and maintained as a place of divine worship of the ministry and members of the Church of God Sanctified, Incorporated: subject to discipline, usage, and ministerial appointments of said church as from time to time authorized and declared by the General Assembly and the Trustee Board. This provision is solely for the benefit of the grantee, and the grantor reserves no right or interest in the premises.

Id. at *18. Following a hearing on various motions for summary judgment, the trial court agreed and entered an order in favor of defendants. The trial court found that the national church's governing documents "governed ownership of the [p]roperty, with the effect that the [p]roperty belonged to the [n]ational [b]ody and was held in trust by [the congregation]." *Id.* at *5.

On appeal, the plaintiffs argued, *inter alia*, that because the congregation "possessed the deeds to the parcels comprising the [p]roperty prior to the Manual's initial publication[,]" and because the deeds were never altered in favor of the national church, "the trial court's finding of a trust in favor of the [n]ational [b]ody represents an impermissible 'retroactive taking' of the [p]roperty." *Id*. at *23. Drawing on *COGIC*, this Court disagreed:

> As the *COGIC* Court explained, the United States Supreme Court in its 1979 *Jones* decision "contemplate[d] two methods of establishing a trust in favor of the hierarchical religious organization—one involving modification of civil legal documents and one involving modification of the governing documents of hierarchical religious organizations." *COGIC*, 531 S.W.3d at 171 (citing *Jones*, 443 U.S. at 603-04).
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> In this case, the [n]ational [b]ody, in establishing its written Manual, chose the second option. "Where a religious organization chooses the second option and includes an express trust provision in its constitution or governing documents *before a dispute arises*, courts in Tennessee must enforce and give effect to the trust provision, even if trust language does not appear in a

> deed or other civil legal document." *Id.* (emphasis added) (footnote omitted). As [d]efendants note, the [n]ational [b]ody provided trust language in its Manual before the instant dispute arose, and we determine that the trial court correctly found the trust language to be effective. We conclude that no genuine issue of material fact precluded the trial court's grant of summary judgment in favor of the [n]ational [b]ody as the owner of the [p]roperty and its associated personalty, through a trust held by the East 8th Street Church of God.

Id.

Accordingly, this Court has already rejected the argument that an express trust is not properly created by governing church documents when the trust language is added after an individual congregation acquires the disputed parcel. Rather, the question is whether the trust language is added "before a dispute arises." *Id*. (quoting *COGIC*, 531 S.W.3d at 171).

Pursuant to *COGIC* and *Blue*, we conclude that the express trust language found in section G-4.0203 of the Book of Order is valid and enforceable and that Bethany held the disputed parcel in trust for the benefit of PCUSA. It is of no consequence that under similar circumstances not involving a church, a trust may not have been valid. Contrary to Bethany's contentions, *COGIC* does not provide that we elevate neutral principles of law above the Book of Order's trust language; rather, *COGIC* provides just the opposite. Nor are we persuaded by Bethany's arguments that the property at issue was all acquired prior to 1982, or that Holston never contributed to the construction, maintenance, or upkeep of the property. By agreeing to be affiliated with and governed by PCUSA, Bethany subjected itself to the above provision. If Bethany did not wish to be bound by the provision in the Book of Order, it could have disaffiliated with PCUSA within eight years of reunification. It did not do so. *See COGIC*, 531 S.W.3d at 173 (noting that defendants "agreed to be bound by COGIC's constitution and governing documents when it joined COGIC and received a COGIC membership certificate"). And, as addressed, the controlling case law provides that this Court "*must* enforce and give effect to the trust provision." *Id*. at 171 (emphasis added).

The trial court's ruling was contrary to precedent of this Court as well as our Supreme Court. Consequently, it must be reversed. Because there are no genuine material facts in dispute and Holston is entitled to a judgment as a matter of law, the trial court's denial of Holston's motion for summary judgment is also reversed.

CONCLUSION

The judgment of the Chancery Court for Sullivan County is reversed and this case remanded for proceedings consistent with this opinion. Costs on appeal are assessed to the

appellee, Bethany Presbyterian Church.

KRISTI M. DAVIS, JUDGE